



# OLR RESEARCH REPORT

February 7, 2012

2012-R-0093

## **CONDOMINIUM ASSOCIATION'S DUTY TO PROVIDE INSURANCE**

By: James Orlando, Associate Analyst

You asked what responsibility a condominium association has to provide insurance coverage for residential condominiums. This report updates OLR Report [2006-R-0593](#).

### **SUMMARY**

Condominium associations must maintain a number of different types of insurance for residential condominiums, including:

1. property insurance to protect (a) against loss to the property's common elements and (b) units in buildings with three or more units divided by horizontal boundaries (stacked units) or vertical boundaries (side-by-side units) including, under certain circumstances, improvements unit owners installed;
2. liability insurance to protect against bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements;
3. fidelity insurance; and
4. flood insurance if the property is located in a flood hazard area and the unit owners vote to require it.

The required insurance policies may be subject to reasonable deductibles. Associations are exempt from obtaining any required insurance if it is not reasonably available, but in that case, they must notify unit owners. Associations can carry other insurance beyond that which the law requires. The law also allows unit owners to buy insurance for their own units.

The law sets various other requirements for the association's required insurance policies. For example, the association's policy must provide primary coverage if, at the time of loss, there is other insurance in the unit owner's name covering the same risk. The law sets requirements for disbursing insurance proceeds and repairing and replacing damaged property.

The law allows nonresidential condominiums to vary or waive these requirements.

## **ASSOCIATION'S DUTY AND AUTHORITY TO MAINTAIN INSURANCE**

The law requires a condominium association to maintain the following types of insurance, to the extent reasonably available and subject to reasonable deductibles. They must have the required insurance no later than the first conveyance of a unit to someone other than the declarant (i.e., the developer) ([CGS § 47-255\(a\)](#)). If the insurance the law requires the association to provide is not reasonably available, the association must promptly notify all unit owners ([CGS § 47-255\(c\)](#)).

### ***Property Insurance***

An association must maintain property insurance on the common elements (and in a planned community, also on property that must become common elements), insuring against all risks of direct physical loss commonly insured against. "Common elements" are all portions of the condominium other than the units. The amount of insurance after any deductibles are applied must be at least 80% of the insured property's actual cash value when the insurance is purchased and at each renewal date. This 80% requirement does not include the value of the land, excavations, foundations, and other items normally excluded from property policies ([CGS § 47-255\(a\)](#)).

Subject to the exception noted below added by PA 11-195, the law requires associations, to the extent reasonably available, to insure the units in any buildings divided by horizontal boundaries (i.e., stacked units) described in the declaration or by vertical boundaries comprising or located within common walls between units (i.e., side-by-side units).

The insurance on such units must include coverage for improvements and betterments unit owners installed unless the (1) declaration limits the association's authority to do so or (2) executive board decides not to insure them after giving notice and an opportunity for unit owners to comment. For common interest communities containing more than 12 units, if the association does not insure all improvements and betterments, it must:

1. prepare and maintain a schedule of the standard fixtures, improvements, and betterments in the units, including any standard wall, floor, and ceiling coverings covered by the association's insurance policy;
2. provide the schedule at least annually to the unit owners to enable them to coordinate their homeowners insurance coverage with the association's insurance policy; and
3. include the schedule in any resale certificate prepared as required by law [\(CGS § 47-255\(b\)\)](#).

PA 11-195 provides that these requirements for insuring the units and owner-installed improvements and betterments do not apply to a building in a common interest community with up to two units divided by a single horizontal or vertical boundary, unless the common interest community voluntarily chooses to comply [\(CGS § 47-255\(b\)\)](#), as amended by PA 11-195).

The fire insurance policies that are part of condominium associations' master insurance policies must include coverage for terrorism-related losses due to fire and other perils insured against [\(CGS § 38a-307a\)\)](#).

### ***Liability Insurance***

The law requires the association to maintain commercial general liability insurance, including medical payments insurance, in an amount the executive board determines but not less than any amount the declaration specifies. This insurance must cover all occurrences commonly insured against for bodily injury and property damage arising out of or connected with the use, ownership, or maintenance of common elements (as well as the units in cooperatives) [\(CGS § 47-255\(a\)\)](#).

### ***Fidelity Insurance***

An association must also maintain fidelity insurance. (This type of insurance protects the association from losses due to dishonest or

criminal acts by employees or other specified people; common claims involve embezzlement, forgery, or robbery) [\(CGS § 47-255\(a\)\)](#).

### ***Flood Insurance***

An association must maintain flood insurance if (1) the property is located in a flood hazard area, as defined and determined by the National Flood Insurance Act and (2) the unit owners, by vote, require it [\(CGS § 47-255\(a\)\)](#).

### ***Other Insurance***

The law allows the association's declaration to require the association to carry other insurance. The association may also carry any other insurance it considers appropriate to protect the association or the unit owners [\(CGS § 47-255\(c\)\)](#).

## **INSURANCE POLICY REQUIREMENTS**

By law, the required insurance policies that associations maintain must provide that:

1. each unit owner is an insured person under the policy with respect to liability arising out of his or her interest in the common elements or membership in the association;
2. the insurer waives its right to subrogation under the policy against any unit owner or member of his or her household;
3. no act or omission by any unit owner, unless acting within the scope of his or her authority on the association's behalf, will void the policy or be a condition to recovery under it; and
4. if, at the time of a loss under the policy, there is other insurance in a unit owner's name covering the same risk covered by the policy, the association's policy provides primary insurance [\(CGS § 47-255\(d\)\)](#).

## **INSURANCE PROCEEDS**

Any loss covered by the property policy the law requires the association to maintain must be adjusted with the association. But the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a security interest.

The insurance trustee or the association must hold any insurance proceeds in trust for the association, unit owners, and lien holders. Subject to the requirements set forth below, the proceeds must be disbursed first for the repair or restoration of the damaged property. The association, unit owners, and lien holders are not entitled to receive any portion of the proceeds unless there is a surplus after the property has been completely repaired or restored or the common interest community is terminated ([CGS § 47-255\(e\)](#)).

### **CERTIFICATE OR MEMORANDUM OF INSURANCE**

An insurer that has issued an insurance policy to the association must issue certificates or memoranda of insurance to the association and, on a request made in a record, to any unit owner or holder of a security interest ([CGS § 47-255\(g\)](#)).

### **INSURER'S CANCELLATION OR REFUSAL TO RENEW POLICY**

An insurer issuing a policy to an association may not cancel or refuse to renew the policy until 60 days after mailing notice of the proposed cancellation or nonrenewal to the association, each unit owner, and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last known addresses ([CGS § 47-255\(g\)](#)).

### **DUTY TO REPAIR OR REPLACE DAMAGED PROPERTY**

An association must promptly repair or replace any portion of the common interest community for which the law requires the association to maintain insurance and which becomes damaged or destroyed, unless:

1. the common interest community is terminated, in which case the law on termination of common interest communities applies (see [CGS § 47-237](#));
2. repair or replacement would be illegal under a state or local statute or ordinance governing health or safety; or
3. 80% of the unit owners, including every owner of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild.

The repair or replacement cost that exceeds insurance proceeds and reserves is a common expense, regardless of whether the excess is due to application of a deductible.

If the entire condominium development is not repaired or replaced, the insurance proceeds that apply to the damaged common elements must be used to restore them to a condition compatible with the rest of the common interest community, except to the extent that other persons will be distributes:

(1) the insurance proceeds attributable to units and limited common elements that are not rebuilt must be distributed to those units' owners and the owners of the units to which those limited common elements were allocated, or to lien holders and

(2) the remainder of the proceeds must be distributed to all unit owners or lien holders in proportion to the common expense liabilities of all the units.

If the unit owners vote not to rebuild a unit, that unit's allocated interests are automatically reallocated as if the unit had been acquired by eminent domain under applicable law. The association must promptly prepare, execute, and record an amendment to the declaration reflecting the reallocation ([CGS § 47-255\(h\)](#)).

JO:dy